Yukon Ombudsman 2009 Annual Report

Message from the Ombudsman

Ombudsman Turns 200!

I recently made a presentation before a hip, informed, and educated audience — not one of them could tell me or would chance a guess at what an Ombudsman does, or why society might need one. Not surprising I guess, but a bit discouraging considering the concept of an independent investigator of complaints about government administration has been around for a couple of centuries.

2009 marks the 200th Anniversary of the first Ombudsman established in Sweden in 1809. The birth of the North American ombudsman (men and women) wasn't until 1967 in Alberta and New Brunswick. Fast forward 40 years and every jurisdiction in Canada (except PEI, NWT & Nunavut) has what is known as a legislative or classical ombudsman. The Yukon Ombudsman was established in 1996. Hawaii appointed its first Ombudsman in the mid '70s but most states have not followed suit. Legislative ombudsmen exist in over 140 countries and the classical ombudsman concept has been modified and adopted by businesses, organizations and institutions across the world. Sounds like a lot of us, but what we do remains a bit of a mystery.

The original concept of an ombudsman came with a description of the role and a list of defining characteristics which remain virtually unchanged in 200 years. Historically, an ombudsman was a public official, appointed by a legislature, to receive and investigate citizen complaints about government administration. The ombudsman was appointed to be independent of government. He had the freedom to investigate complaints and criticize when necessary with the goal of remedying unfairness or injustice.

Those benchmarks remain unchanged in the modern ombudsman world. An ombudsman plays a crucial role in today's democracy. On a daily basis we work to promote fairness, hold authorities accountable and improve government administration.

Our work is not about "catching" wrongdoers, surprise investigations, pointing fingers, embarrassing workers or making mistakes public. It is about listening, discovering facts, evaluating evidence, and coming to a conclusion. If I conclude that the government acted fairly, then nothing more needs to be done. If I conclude that there has been an unfairness, I will make recommendations stating what I think they should do to make things right, both for the complainant and for others who could run into the same problem. A recommendation might be specific to a complainant — reconsider an application, reimburse her, provide reasons for a decision to him. Or it might be more general — develop a policy, draft a public notice, clarify a practice, provide staff training. Both types of recommendations are equally important. A good example of a case with both a specific and a general recommendation appears later in this report in *Costly Medevac — An Update*.

Early Resolution of Complaints

While an ombudsman must have the authority to ultimately conduct a formal investigation, many problems are solved or improvements made without one. Where possible we try to resolve complaints at the early stages. Our early resolution process works to ascertain facts, identify issues and determine if a complaint can be resolved without the need for a formal investigation.

At the early resolution stage we take steps to help the complainant and the government understand each other's position. If communication has broken down, we work to re-establish it. Sometimes we assist by providing additional information or suggesting other possible outcomes that lead to resolution of the complaint. Other times through the course of our inquiries the government may voluntarily take steps to correct or improve the situation.

We are having more and more success at resolving complaints at this early stage. Early resolution without a formal investigation in no way diminishes the value of the result. Our goal is to find solutions, promote fairness and accountability and to improve government administration — no matter the path we use to get there. Problems get solved when parties come to the table with an open mind and the desire to find a solution. We have included a number of examples of early resolution cases later in this report.

Yukon Deserves a Full-time Ombudsman & Information and Privacy Commissioner

My work is compelling and dynamic and it is my honour to serve the people of the Yukon. However, I continue to be frustrated by the government's failure to recognize that limiting this position to half-time negatively impacts my ability to achieve its legislated objectives and properly serve the people of the Yukon.

In 1996, when the Yukon government established the Office of the Ombudsman and Information and Privacy Commissioner (IPC) it made a commitment to an efficient, expedient and inexpensive way to identify problems, resolve issues and ultimately improve government services. The office is an integral part of an open and accountable government.

In 1996, the dual Ombudsman/IPC position was created as one half-time position, which is still the case in 2009. This equates to less than two hours per day for each of the two functions. Fourteen years ago that may have been sufficient. That is no longer the case.

I urged the government in both 2007 and 2008 to make the position full-time. I advised them that a half-time Ombudsman/IPC cannot adequately fulfill all the duties of the office. To date, they have denied this request.

Looking Forward

Several recent cases have brought to our attention the considerable issues that face Yukon's boards, commissions and tribunals. We have concerns about the guidance, support and training provided to these organizations that play a vital role in the Yukon administrative justice system. In the coming year my office will explore these issues and focus on fostering fair and consistent processes, proper record keeping and access and privacy practices consistent with the *Access to Information and Protection of Privacy Act*.

To address the ongoing mystery of who we are and what we do, public education about the role of the Ombudsman and the IPC and the service we provide to Yukoners, will be a priority for us in 2010.

The development of a fairness booklet, info card for seniors and an updated website are all projects planned to reach beyond our current audience and raise awareness of the services we provide. An Ombudsman/IPC business plan, to guide and direct the work of the office, would also be a great addition to our public reporting materials.

14th Annual Report

It is my honour and privilege to offer the people of the Yukon this 14th Annual Report of the Yukon Ombudsman. This is my third Annual Report. It has been sent to the Honourable Ted Staffen, Speaker of the Yukon Legislative Assembly, who will present it to the Assembly as required by the *Ombudsman Act*.

Tracy-Anne McPhee
Ombudsman
Information and Privacy Commissioner

Yukon Ombudsman & Information and Privacy Commissioner

Our Mission

To provide an independent, impartial means by which public complaints about administrative decisions of the Government of Yukon and its agencies can be heard and investigated with the goal of promoting fairness, openness and accountability in public administration.

What We Do

The function of the Yukon Ombudsman is to promote and ensure openness, accountability and fairness in the provision of Yukon government services.

Every day, the Yukon government makes decisions and provides services that affect people's lives. If you believe that a government decision or process is unfair, you may complain to the Ombudsman. Through an investigation of your complaint, the Ombudsman can independently and impartially look at the matter to identify whether or not you have been treated fairly.

If you have been treated unfairly, the Ombudsman can recommend changes to correct the unfairness. This can result in benefits for the person who brings the complaint forward, as well as others in the same situation, the government and all citizens of the Yukon.

Through our work, we also try to educate the public and government about fairness in administration and the role of our office.

What is the Yukon Ombudsman?

The Yukon Ombudsman is an impartial investigator who determines whether administrative decisions of government and its agencies are fair. The Ombudsman is an officer of the Legislative Assembly but is independent of government and political parties. The Ombudsman is neither an advocate for a complainant nor a defender of government actions.

First Steps

The Office of the Ombudsman is generally an office of last resort. Many complaints can be resolved quickly by first approaching the government organization involved and using internal complaint or appeal procedures. If you are not certain what complaint or appeal procedures might apply in your case, you can speak to the organization directly or the Ombudsman can assist you by providing referral information on how to address your problem.

Remember to:

- get the names and titles of the people you have dealt with;
- keep track of the dates of your contact with the organization; and
- keep all papers and letters relating to your complaint.

This information is helpful if you cannot resolve the problem with the government body and you need to bring your complaint to our office.

What We Can Investigate

The Ombudsman **can** investigate:

- Yukon government departments
- crown corporations and independent authorities or boards
- public schools
- Yukon College
- hospitals
- professional and occupational governing bodies
- municipalities and Yukon First Nations (at their request only)

The Ombudsman **cannot** investigate:

- disputes between individuals
- the federal government
- the courts, Yukon Legislature, Yukon Elections Office, or lawyers acting on behalf of government
- the RCMP
- landlord/tenant matters
- home or auto insurance
- banks
- businesses
- matters which took place before the *Ombudsman Act* became law (1996)

Not all complaints get investigated. Sometimes a formal investigation is required. Often, however, it is more appropriate to deal with a complaint using other approaches. Each complaint is unique and we try to assist in finding the best method to deal with the complaint.

All services of the Office of the Ombudsman are free and confidential.

What Happens When You Ask Us For Help

When a complaint comes to us, it follows a process that includes assessment of our jurisdiction, preliminary inquiries and research, possible investigation and resolution. Here is a brief description of how our process works.

Step 1 — Is this the type of complaint we can take?

We will listen to your complaint and ask questions to determine if our office is the best place to deal with it. The Yukon *Ombudsman Act* sets out the types of complaints that we can take. If the Act does not apply to your complaint, we will talk to you about other options.

Step 2 — Is the complaint ready for us?

We will ask what steps you have already taken to resolve your complaint. We will want to know things such as:

- did you ask the government office to give you reasons for the decision?
- did you attempt to resolve your matter with the senior management of the department?
- was there an appeal or review process? If so, did you try it?

If you have not tried some of these options, we'll ask you to do so, before we take your complaint. Before coming to us, you must try to resolve the matter using any internal complaint or review procedures that are available.

Step 3 — What information do you have?

We will ask you for all the details about what happened. We may ask you to write down your story and give us copies of any documents you have about your complaint.

Step 4 — How do we deal with the complaint impartially?

We will look at your information and will also ask the government for information so that we can assess your complaint. If necessary, we will conduct interviews with persons involved in the matter.

Step 5 — If your complaint is not resolved, what's next?

If your complaint can't be resolved informally, we may investigate. Sometimes things can be resolved through discussion with the department during the investigation process. After investigation, if your complaint is substantiated, the Ombudsman can make recommendations to the department.

Thank You...

Our appreciation and best wishes go out to Alice Purser as she takes her career in a new direction. Alice kept our office on track for almost eleven years and her contribution to our work was invaluable.

The office of the Yukon Ombudsman and Information and Privacy Commissioner is staffed by a small group of dedicated women who produce exceptional work on a daily basis. I thank each of them for their expertise, professionalism, sense of humour and guidance.

Accolades

Taking complaints, investigating concerns and resolving conflict is challenging work that requires a balanced and cooperative approach. We do not accomplish this alone. I offer our thanks to individuals and authorities that recognize our common goals and help us work toward them.

Ombudsman Recommendations

Investigations by the Ombudsman often result in recommendations to the government which are designed to help improve its administration and service to the public. The following examples illustrate the nature and scope of recommendations made by this office.

- Provide meaningful reasons for decisions. Reasons should include sufficient information so the person affected knows the facts considered and the specific legislation, policy or directives relied upon in making the decision.
- When advising someone of a decision, include information about any right of review or appeal of that decision.
- Develop a comprehensive written policy, setting out the criteria and process for handling applications.
- When relying on policy in making a decision, ensure that those policies are available to the public.
- Provide an apology to a complainant who was treated unfairly.
- Forego collection from a complainant of all the costs related to a medical evacuation and reimburse for the costs of return travel from British Columbia.

Community Outreach

The Office of the Ombudsman is a free service available to all Yukoners. We strive throughout the year to publicize our work to ensure Yukoners are aware of the services that are available to them from our office.

We use a variety of educational tools, such as public education sessions, presentations, news releases and brochures. During 2009, we continued to work on public education materials, including work on a new website to be launched in 2010.

In July 2009, the 2008 Annual Reports of the Ombudsman and the Information and Privacy Commissioner were tabled with the Yukon Legislative Assembly and issued to the public. The goal of the reports is to "inform, educate and illustrate the nature of the work we do and the results achieved."

2009 marked the 200th anniversary of the birth of the Ombudsman concept in Sweden in 1809. To mark the occasion, the Canadian Parliamentary Ombudsman celebrated the first Fairness Week from October 12th to the 16th.

Fairness Week Activities in the Yukon included:

- a presentation by the Ombudsman to students from Vanier Catholic Secondary School's Leadership Class and to the Social Justice Club;
- participation in Whitehorse Connects, an event aimed at connecting those in need with service providers in the community;
- bookmark distribution at Yukon bookstores and libraries; and
- introduction of a "recipe for fairness."

In addition to our own initiatives, we work to make ourselves available to the public at their request. We encourage Yukoners to contact us if they are interested in learning more about what we do. We consider public education about our office a crucial part of making our work more effective.

fairnessweek

promoting and protecting public interests for 200 years

Two New Places to Resolve Complaints

There are now two new places for Yukoners to take their complaints. This year marked the establishment of the Investigations and Standards Office and the Yukon Child and Youth Advocate.

Investigations and Standards Office (ISO)

Inmates at Whitehorse Correctional Centre (WCC) and persons subject to a probation order or a conditional sentence have a new place to take complaints.

The Investigations and Standards Office (ISO) was established as part of the 2009 *Corrections Act*.

The ISO office is responsible for:

- independent investigation of critical incidents, complaints, issues and problems related to the administration or operations of the Whitehorse Correctional Centre (WCC) correctional and probation programs;
- review of appeals of inmate discipline; and
- inspection of correctional facilities.

If a complaint is substantiated, the ISO can make recommendations to the WCC. The Director of the ISO also has the authority to initiate an investigation.

For further information or to make a complaint or have a review of a disciplinary hearing, contact:

Investigations and Standards Office
301 Jarvis Street
Whitehorse, Yukon Y1A 2H3
Phone: (867) 456-6597

If you are not satisfied with the results of a complaint to the ISO, you can contact the Office of the Ombudsman with your concern.

A Yukon Child and Youth Advocate

Children and their families dealing with the Yukon government also have a new mechanism for dealing with complaints. Andy Nieman has been appointed the Child and Youth Advocate. His office opens April 1, 2010.

The Child and Youth Advocate is an independent Officer of the Yukon Legislative Assembly. His office will give children and youth the right to be heard. He will act as an advocate for those receiving services from the Yukon government, to ensure that their rights, preferences and interests are recognized.

The Office of the Child and Youth Advocate will:

- provide information, advice and support to children and youth;
- deliver Yukon-wide non-legal advocacy services to children and youth;
- resolve individual matters through the use of informal dispute resolution; and
- formulate and provide advice, related to child and youth matters, to First Nations, school boards and Yukon government departments.

You can contact the Child and Youth Advocate at:

Yukon Child and Youth Advocate Office
Unit 19 - 2070 Second Avenue
Whitehorse, Yukon Y1A 1B1
Phone: (867) 456-5575

If the Child and Youth Advocate is unable to resolve your matter, you can come to the Office of the Ombudsman.

Our Team

Tracy-Anne McPhee: Ombudsman & Information and Privacy Commissioner
Tracy is an Officer of the Legislative Assembly and was appointed in April 2007 for a five-year term.

Catherine Buckler Lyon: Senior Investigator/Mediator
Catherine has been with the Office of the Ombudsman & IPC since its inception in 1996. As Senior Investigator/Mediator, she deals with a majority of the *Access to Information and Protection of Privacy* (ATIPP) *Act* files, reviews and investigations.

Susan Dennehy: Investigator/Mediator/Legal Counsel
Susan is legal counsel to the Ombudsman and deals with the majority of the Ombudsman complaints that we receive. Susan has worked with the Ombudsman since 1999 and joined our office in 2001.

Danielle Noel: Executive Assistant
Danielle is the newest member of our team and is responsible for the day-to-day operations of the office. She came on board in December 2009.

L–R: Susan, Danielle, Tracy, Catherine

Fairness and Accountability — Case Summaries

Often the best way to describe something is to give examples. We've collected several stories that illustrate the work we've done in 2009 and the results we can achieve. This year, several of our stories deal with cases that were resolved early, before a full investigation took place. Because our services are confidential, we've changed the names of the individuals involved.

Early resolution process — co-operating towards better government

For the last few years, the Office of the Ombudsman has been working to build relationships with government departments, to create a positive atmosphere which will lead to the satisfactory resolution of complaints and issues brought to us. We believe this approach is working and is already beginning to bear fruit.

In many cases, this means that complaints which are brought to us are resolved early, before an investigation is initiated. The work leading to early resolution of cases is an important aspect of what we do. It includes meeting with the individual who has the complaint, speaking with the government department or departments involved about the complaint (with the complainant's consent), clarifying facts, ensuring all options for resolution have been pursued, conducting research and suggesting alternate ways to resolve the issue. It might also include assisting the department involved to find a way it hadn't thought of to resolve the issue.

Here are two examples of 2009 cases in which early resolution of complaints was achieved through work done by our office.

The people behind the paperwork

Health and Social Services (HSS)

Jack is a Whitehorse man who receives Social Assistance payments from the Yukon government department of HSS. Jack lives in a small rented house. His living situation qualified him for a shelter allowance. In order to receive the shelter allowance, Jack needed to show the department proof of the amount of rent paid to the legal owner of the property. The proof needed to come in the form of a document signed by the owner of the property. In most cases, this is a simple process, but it turned out to be a huge challenge in Jack's case. The home Jack had been renting was sold but Jack continued to pay to live there. The new owner refused to sign the document verifying the amount of rent Jack paid because the sale was a temporary arrangement. The new owner was going to transfer the house back to the former owner sometime in the near future. In the meantime he had nothing to do with the rental of the property. The former owner continued to be responsible for renting the house and the monthly rent was paid to him. Following its policy, the department would not accept the proof of payment from the former owner since he was no longer the legal owner of the property.

Jack spoke to HSS, outlining the circumstances that were preventing him from producing proof of his rental situation from the property owner. The department contacted the new owner who also explained the situation, verifying Jack's story. However, the department continued to refuse to pay Jack a shelter allowance, saying that the proof of rental must be provided by the legal owner.

At this point, Jack came to us explaining that he was not receiving a shelter allowance for which he was qualified. We spoke with HSS, and discussed Jack's situation. The department knew that the legal owner was not prepared to provide the necessary verification. It also knew that Jack continued to pay rent to the former owner.

We suggested it was not reasonable to insist on paperwork that could not be obtained for a legitimate reason and asked if there was a way to resolve the problem so that Jack could receive the shelter allowance to pay his rent.

Resolution: The HSS program manager considered the matter and called our office to say that Jack could satisfy the department's rules by providing proof of payment from the former owner. With a relatively small amount of involvement by us, the department looked beyond a strict adherence to a policy and the paperwork to see a person who had real needs and a problem that needed a solution. The case was resolved quickly, without a full investigation.

New procedure = a solution

Justice, Whitehorse Correctional Centre (WCC)

Bryan was an inmate at the WCC and worked as a member of the jail's work crew. He and other work crew members left WCC daily at approximately 8 a.m., accompanied by correctional officers. They returned around 3 p.m., after their day's work was done.

Bryan was on medication, which he normally received first thing in the morning. This is where his problem arose. Nursing staff at WCC delivered medication to inmates in their dorms at set times every day. Because Bryan's work crew left the jail at 8 a.m., he was already gone by the time the morning medication was delivered and he was unable to receive his medication until he returned to the jail in the late afternoon.

Bryan felt worried that he was not receiving his medication in the morning and he complained to a corrections officer and a case manager. When nothing changed, he brought his complaint to us and we began looking into it.

Our investigators found that this issue affected several people at the jail who were supposed to take medication in the morning but were not on the premises at the time medications were delivered due to court appearances or being part of a work crew.

After our office began to look into Bryan's case, WCC reviewed the situation and decided that it was possible to solve Bryan's problem and help others as well. Staff established new procedures for cases like Bryan's to ensure inmates leaving the facility before the morning medication rounds were provided with their medication.

Although we did open an investigation into Bryan's case, we were able to close it before the investigation went very far because the Correctional Centre responded to our enquiries and resolved the complaint.

An inmate's right to treatment

Justice, Whitehorse Correctional Centre (WCC)

Jennifer is a Yukon First Nations woman who was an inmate at the WCC. She had been diagnosed with a serious chronic medical condition and her physician and a specialist recommended treatment. She met the protocol for treatment and all medical personnel involved suggested that offering treatment in a controlled environment, during her incarceration, was a good idea. In addition, Jennifer was very motivated to undergo treatment. The downside was that the treatment required medication that was very expensive.

If Jennifer had not been an inmate, the cost of the medication would have been covered by the Yukon government's Insured Health and Hearing Services program and/or the federal Department of Indian Affairs and Northern Development. However, health care and medications for inmates are paid for by the WCC out of its own budget.

The WCC had paid for similar treatments in the past for other inmates. But when Jennifer's case arose, the WCC decided that it did not have enough money in its budget at that time to fund the expensive treatment. Jennifer brought her case to us and we began an investigation.

Shortly after our investigation began, the WCC changed its decision and found the necessary money. We then discontinued our investigation into Jennifer's case, since her complaint had been satisfactorily resolved. ■

Investigations

Clear, consistent decision making = fairness

Health and Social Services (HSS), Insured Health and Hearing Services (IHHS)

Jake had decided he wanted to use a surgical procedure to help him lose weight. He and his doctor had looked into different types of bariatric surgery, all of which change the digestive system, often to limit the amount of food that can be eaten.

The Yukon IHHS program had approved several types of bariatric surgery for coverage. But the type of procedure Jake wanted to have was not approved for coverage. His doctor made a recommendation to IHHS, explaining why Jake needed the surgery and why it should be insured for him. IHHS denied the request saying it was more costly than other forms of bariatric surgery and because it had found no long-term comparative studies regarding its effectiveness.

Jake accepted this decision but went ahead with the surgery anyway, paying for it himself. Some time later, Jake found out that another Yukoner had had the same kind of surgery as he did but in that case, the Yukon government had paid for it. Jake couldn't see why he had been turned down or how his case was different from the person whose surgery had been paid for. It didn't seem fair to him and he came to our office.

We investigated Jake's case and, in particular, were interested in learning how these types of decisions are made and what measures are taken to ensure consistency. We found that IHHS did not have a clear transparent process for making these decisions, nor did it have an appeal or review process in place. We recommended that IHHS develop clear criteria and a transparent process for this type of decision-making, which should include an appeal mechanism.

Outcome: IHHS accepted our recommendation and developed a new process for considering coverage of new procedures or treatments. The new process includes an appeal mechanism. In addition, IHHS reimbursed Jake the amount it would have paid for his surgery had it approved his request in the first place.

Costly medevac: an update

Yukon Hospital Corporation (YHC) and Health and Social Services (HSS)

Last year I reported on an investigation that involved both the YHC and HSS. My office had investigated a complaint from Robert, a new resident of the Yukon, who had fallen ill and needed to be medevaced to a hospital in British Columbia. At the time of the medevac he was two days short of being covered by the Yukon Health Care Insurance Plan (YHCIP) so the costs of a medevac were not covered. Upon his return to the Yukon, he received a bill for the cost of the ambulance and medevac amounting to more than $15,000.

Robert maintained that when he explained to medical staff at the hospital that he had no money to pay for a medevac, he was told not to worry about it and assured that it would be worked out. Robert said he agreed to the medevac relying on this assurance that he would not be liable for the cost. Robert was surprised and shocked to receive a bill and brought the issue to my office.

The investigation revealed that a physician, two nurses and a hospital administrative person had spoken with Robert about the about medevac costs. The staff told our office that their practice is to make clear to patients with non-resident status that they will need to cover the costs of medical evacuation. However, no one was able to recall precisely the nature of the conversations with Robert and no notes had been made about these conversations by anyone at the hospital. One staff member suggested to us that it is "common knowledge" that individuals not covered by the YHCIP must pay these costs themselves.

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Statistical Summary — Ombudsman Services

Every year we are contacted by hundreds of Yukoners. They may be seeking information, asking for help or direction with a concern, or making a complaint. Even though many of the complaints or issues are outside our jurisdiction, we try to help. We often spend time directing citizens to the right place or making inquiries on their behalf to ensure that they are on the right track. This work can take only a few minutes or can keep us busy for several hours. We make a point of carrying out this work because in many cases, people are nearing the end of their patience by the time they get to us, and the last thing they need is to be told yet again that they are in the wrong place.

In 2009, we received 125 complaints. Of those, 92 were within our jurisdiction and 33 were not. We provided information to another 83 people or suggested where they could get assistance if we were unable to help.

Complaints Handled in 2009

Brought forward from 2008		53
complaints being investigated	37	
not yet analyzed	16	
Received in 2009		92
Total		**145**
Completed in 2009		73
Carried over to 2010		72
complaints being investigated	36	
not yet analyzed	36	

Resolution of Complaints Received in 2009

Opened as investigation	10
Referred to another remedy	22
Further investigation not necessary	7
Insufficient information provided	2
Complaint withdrawn	5
Other — not an aggrieved person	6
No benefit to complainant	5
Otherwise resolved	8
Not yet analyzed	27
Total	**92**

Complaints Investigated in 2009

Brought forward from 2008	37
Opened in 2009	10
Total	**47**
Completed in 2009	11
Carried over to 2010	**36**

Outcome of Investigations Completed in 2009

Substantiated	5
Resolved when authority informed of complaint	1
Settled during or after investigation	3
Report/recommendations to authority	1
Not substantiated	6
Discontinued	0
Total	**11**

Non-jurisdictional Complaints* Received in 2009

Businesses	11
Contracted Services	2
Courts	4
Federal	4
First Nations	1
Municipalities	2
Other	4
Other Provinces	2
RCMP	3
Total	**33**

**These complaints often require time to research before being referred to other agencies for assistance.*

Complaints Received in 2009 — by Authority

Authority	Opened as Investigation	Not Opened as Investigation	Not Analyzed	Total
Bid Challenge Committee	1			1
Driver Control Board		1		1
Energy, Mines & Resources		4	1	5
Education		3	6	9
Environment		2		2
Health and Social Services		11	3	14
Highways and Public Works		1		1
Justice		2	1	3
Public Service Commission		1	1	2
Whitehorse Correctional Centre	6	28	15	49
Whitehorse Housing Authority				
Yukon College		1		1
Yukon Liquor Corporation		1		1
Yukon Workers' Compensation Health & Safety Board	3			3
Total	**10**	**55**	**27**	**92**

Ombudsman requests for information*

Total	**83**

**Requests for information often require research time.*

Budget Summary

The budget for the operations of the Office of the Ombudsman and the Information and Privacy Commissioner is submitted annually to the Members' Services Board for review before being approved by the Yukon Legislative Assembly. The budget summary below covers both functions of the office for the period from April 1, 2009 to March 31, 2010.

The 2009–2010 budget remained relatively unchanged from the previous year.

Category	Expenditures
Personnel	$ 403,000
Office and Operations	$ 105,000
Supplies and Services	$ 2,400
Capital Items	$ 2,000
Total	**$ 512,400**

Investigations — continued from previous page...

The investigation determined that there were no written guidelines on these matters for hospital staff, no written public information materials for hospital patients and no consent or acknowledgement-of-liability forms used for capable non-insured patients who require medical evacuations.

An aspect of fairness is that authorities will act in a way to avoid damaging or prejudicing an individual's position. When a patient expresses concern about the costs of a medevac the result should be full, frank and accurate answers from the physician and/or hospital staff. Care must be taken to avoid misleading assurances, inaccuracies or omissions in the information.

I concluded that the YHC had failed to exercise proper care and attention required of an authority in this case. Robert was dependent upon the attending physician and nursing staff to provide clear and accurate information in order to make a fully informed decision about whether or not to be medevaced for treatment. This was not done. As a result, I concluded that it would be unfair to require Robert to pay the cost of the medevac.

This investigation dealt with two different authorities, the YHC and HSS. To address the identified unfairness in this case, I recommended that the YHC develop a comprehensive policy and guide for staff dealing with capable non-insured patients who require medical evacuations. They agreed and did so.

I also recommended that HSS forego collecting the costs of the medevac from Robert. The department refused to accept my recommendation and continued to insist that Robert pay the bill for the medevac.

As Ombudsman, I am never an advocate for an individual complainant. However, when I make a recommendation to address a finding of unfairness, I become an advocate for that recommendation.

The Yukon Ombudsman does not have the authority to order compliance — my power is that of moral suasion. When an authority refuses to take action that I consider adequate or appropriate, I may, after considering any reasons given by the authority, make a report of the matter first to the Commissioner in Executive Council (Cabinet) and then, if appropriate to the Legislative Assembly, pursuant to section 25(1) of the *Ombudsman Act*.

In February 2009, I wrote to the Commissioner in Executive Council, through the Premier, reporting the details of the investigation, my findings and recommendation.

In April, the Honourable Glenn Hart, Minister of Health and Social Services replied. He advised that "...the government respectfully cannot accede to your recommendation."

In May of 2009, I decided to take the extraordinary step of reporting this case to the Legislative Assembly. The investigation confirmed that there was no clear protocol or policy in place at the time to ensure patients were fully and accurately informed about the costs and liability of a medevac. There was no clear evidence that Robert was given frank and accurate information about the costs of a medevac or his personal liability for it when he was deciding on his treatment. The YHC acknowledged this problem and undertook to develop policy to remedy the situation and yet the government insisted that Robert pay for the medevac. This was not a reasonable position and was unfair to Robert.

In the 13 year history of the Office of the Ombudsman this is the first occasion that a report to the Legislative Assembly has been necessary to address an unfairness in government administration. The report made in this case generated media attention and increased pressure on the government to change the decision and do the right thing. Initially, the government continued with its plan to collect the debt from Robert. In early July 2009, I was copied on a letter the government sent to Robert indicating that the costs of the medevac would be paid by the YHC, thus eliminating the debt.

The result of this case was important to Robert and his family but it also worked to ensure that future uninsured patients will be given all necessary information to make a fully informed decision about their treatment. ■

Contact Us

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